Lsp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5772 of 1998

Shri Sudhakar Chindu Bhadane ...Petitioner
V/s.

The Niphad Taluka Education
Society & others ...Respondents

Ms. Kumud A. Bhatia for the Petitioner

Mr.P.M.Hardas i/b. Mr.P.N.Joshi, Advocate for
Respondent no.3
Mr.A.P.Vanarse, AGP for Respondent Nos. 5 to 7

CORAM : B.H.MARLAPALLE,J.
DATED : 29th November, 2007

ORAL JUDGEMENT

This petition under Article 227 of the Constitution arises from the order passed by the School Tribunal, Nashik region at Nashik on 24-7-1998 thereby dismissing Appeal No. 1/1998 filed under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (for short MEPS Act).

2. The Petitioner was initially appointed as a junior clerk w.e.f. 1-8-1971 in the Respondent no.1 education society. However, he came to be appointed as an Assistant Teacher sometimes in the year 1975. On 26-6-1992 he was terminated from service and, therefore,

he filed Appeal No. 21/1992 which was allowed by the School Tribunal. Said order was challenged in Writ Petition No. 1548/1994 which came to be dismissed by this Court on 27-6-1994 by Division Bench of this Court.

3. As per the Petitioner when he went to join for duty on 6-1-1998 he was not allowed to join by the Head Master and, therefore, he met the Chairman of the Society and requested him to allow him to resume his duties. However, the Petitioner was not allowed to resume duties and, therefore, he filed Appeal No. 1/1998 on or about 20-1-1998 against the Respondents. The management appeared and filed written statement and contended that the allegations of oral, illegal termination are false. The management has not terminated his service and infact it was the appellant himsef who had voluntarily abandoned his service w.e.f. 6-1-1998. It was further contended that when the appellant approached the School Tribunal on 13-3-1998, on 6-4-1998 there was an order directing him to report for duty. The appellant reported for duty but thereafter abandoned his employment. This reply was dated 17-3-1998 and management was claiming that till 6-4-1998 the appellant has not joined for duty. Before the School Tribunal the appellant also brought on record the affidavit of co-employee Sunil Amrutrao Pagar who

stated that he was working in the same School and the Head Master was not allowing appellant to report for duty. He specifically stated that on 6-4-1998 he had gone with the appellant in the school at Pimplegaon, Baswant and when the appellant expressed his desire to join for duty, the Head Master did not allow him to report and sign the muster-roll. The Learned Presiding Officer of the School Tribunal accepted the management's contention that the appellant had infact voluntarily abandoned service and, therefore, there was no termination of service. Consequently, the appeal was dismissed.

4. The approach of the School Tribunal is utterly erroneous and infact against the scheme of MEPS Rules, 1981. Rule 16(3) of the said Rules states as under:-

> "in case of permanent employee who, without sufficient cause, fails to apply for leave within seven days from the date of absence, it shall be treated as breach of discipline and he shall be liable for suitable disciplinary action after due enquiry. A permanent employee who is absent from duty without leave continuously for a period (exceeding) three years or more, shall be deemed to have voluntarily abandoned his services."

Thus, Rule 16(3) defines the term "voluntary abandonment of service" and it means that when a permanent employee is absent from duty without leave continuosly for a period of exceeding 3 years or more, there will be a deemed voluntary abandonment of service, so is not the case at hands. When the appellant was stopped from reporting for duty on 6-4-1998, soon thereafter he has approached this Court.

5. If it was the management's contention that the appellant had voluntarily abandoned the service, it was necessary for it to issue a show-cause notice as contemplated under Rule 16(3) of the Rules. This has not been done and, therefore, by mere statement without any supporting proof that the appellant had abandoned the service voluntarily cannot be accepted. The appellant was the permanent teacher with about 25 years of service and the management has failed to make out the case that infact the teacher had voluntarily abandoned his service. There was no material placed before the School Tribunal either insupport of the case that he was issued show-cause notice under Section 16 of the MEPS Act or that he had been marked absent continuosly for a period of 3 years or more and, therefore, there was deemed voluntary abandonment of service.

6. It is, therefore, clear that the School Tribunal fell in error in rejecting the Appeal.

7. Once the order of termination either oral or in writing is set aside, the normal rule is that of reinstatement and backwages, however, in the instant case it has been admitted that the petitioner has attained the age of superannuation on 31-3-2001 and his appeal has been dismissed on 24-7-1998. The petitioner is, therefore, entitled for backwages and, there is no question of granting reinstatement as of now.

8. Hence the Petition is allowed. The impugned judgement and order dated 24-7-1998 passed by the Learned Member of the School Tribunal in Appeal No. 1/1998 is hereby quashed and set aside. Appeal No. 1/1998 filed by the Petitioner hereby stands allowed and he shall be treated to be reinstated with continuity in service, backwages and all other consequential benefits till he attain the age of superannuation on 31-3-2001. The amount of salary for the intervening period i.e. from 6-1-1998 to 31-3-2001 shall be calculated as if the Petitioner was in service and shall be paid to him by the Respondent management within a period of 3 months from today. He shall be entitled for all consequential benefits including retirement benefits. The amount of

backwages to be paid to the Petitioner shall not be claimed by the management from the State Government.

9. Rule made absolute in terms of above directions with no order as to costs.

[B.H.MARLAPALLE,J.]